

353.9  
Un

# The MONTANA UNEMPLOYMENT COMPENSATION ACT

Chapter 137  
Session Laws of 1937  
Approved March 16, 1937

As amended by Chapter 137, Session Laws of 1939  
Approved March 9, 1939

And Chapter 167, Session Laws of 1939  
Approved March 15, 1939

Issued by

The Unemployment Compensation  
Commission of Montana

---

April 1939

---



353.9  
Un



Digitized by the Internet Archive  
in 2012 with funding from  
Montana State Library

<http://archive.org/details/montanaunemploy1939mont>

BARCLAY CRAIGHEAD  
Chairman

GEORGE R. SHEPARD  
Commissioner

LOUIS G. DeNAYER  
Commissioner

## THE UNEMPLOYMENT COMPENSATION COMMISSION OF MONTANA

---

Helena, Montana,  
April 15, 1939.

Constituting the foundation for the regulations and explanatory matter prepared and distributed to Employers and Workers of the State by the Unemployment Compensation Commission of Montana, with the advice of the Federal Social Security Board, the Montana Unemployment Compensation Act, passed by the Legislative Assembly of 1937 and approved by the Governor, March 16, 1937, and amended by the Legislative Assembly of 1939 and approved by the Governor, has been printed in full and is herewith submitted by the Commission for your information.

The Act, in booklet form, has been printed with pages sized to conform to those of the series of Explanations which are being issued by the Commission, and is punched to permit of filing in a ring binder with Explanations, Regulations and other papers or documents pertaining to the Employers' liabilities under the Act.

Amendments to the law made by the 1939 Legislative Assembly are printed in italics.

As but a limited number have been printed Employers are requested to preserve them for future reference, even though the provisions of the Act are largely covered in explanatory matter and regulations put out by the Commission.

BARCLAY CRAIGHEAD,  
Executive Director.

*Amendments made to the law by the  
1939 Legislative Assembly  
are printed in italics*

## CHAPTER 137

An Act Providing for Unemployment Compensation; Creating a State Unemployment Compensation Commission; Establishing an Unemployment Compensation Fund and Providing for the Administration, Distribution and Investment Thereof; Providing for the Assessment and Collection of Contributions Upon Payrolls of Employers; Creating a State Employment Service and Providing an Appropriation Therefor; Providing Penalties for Violations. (As amended).

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. This Act shall be known and may be cited as the "Unemployment Compensation Law."

### DECLARATION OF STATE PUBLIC POLICY

Section 2. As a guide to the interpretation and application of this Act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this State require the enactment of this measure under the police powers of the State for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

## BENEFITS

Section 3. (a) PAYMENTS OF BENEFITS. Thirty (30) months after the date when contributions first accrue under this Act from the employer, benefits shall become payable from the fund to any individual who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; *provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer as defined in said Act, shall not be included for the purpose of determining eligibility or weekly benefit amount under this Act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act.* All benefits shall be paid through public employment offices in the State of Montana, *or other agencies designated by the Commission*, in accordance with such rules and regulations as the Commission may prescribe.

(b) WEEKLY BENEFIT AMOUNT FOR TOTAL UNEMPLOYMENT. Each eligible individual, who is totally unemployed (as defined in this Act) in any week, shall be paid with respect to such week, benefits at the rate of *four per cent (4%) of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next higher multiple of a dollar, but not more than Fifteen Dollars (\$15.00) per week, nor less than Five Dollars (\$5.00) per week.*

(c) WAGE RECORD. *The Commission shall maintain a record of the wages earned by an individual in accordance with wages earned by him for employment by employers during each quarter.*

(d) DURATION OF BENEFITS.. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed sixteen (16) times his weekly benefit amount."

## BENEFIT ELIGIBILITY CONDITIONS

Section 4. An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe, *except that the Commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this Act, provide for registration and reporting for work by mail or through other governmental agencies.*

(b) He has made a claim for benefits in accordance with the provisions of Section 6 (a) of this Act.

(c) He is able to work, and is available for work.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of *two* (2) weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (c) of this section;

(3) Unless it occurs within the thirteen (13) consecutive weeks preceding the week for which he claims benefit, provided that this requirement shall not interrupt the payments of benefits for consecutive weeks of unemployment; and provided further, that any individual who, prior to the first day of his benefit year, shall have accumulated such *two* (2) waiting period weeks, shall not be required to accumulate more than *two* (2) additional waiting period weeks during his ensuing benefit year.

(4) Unless it occurs after benefits first could become payable to any individual under this Act.

(e) *He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount."*



## DISQUALIFICATION FOR BENEFITS

Section 5. An individual shall be disqualified for benefits:

(a) If he has left work voluntarily without good cause, if so found by the commission, for a period of not less than one (1) or more than (5) weeks (in addition to and immediately following the waiting period), as determined by the commission according to the circumstances in each case.

(b) If he has been discharged for misconduct connected with his work, if so found by the Commission, for a period of not less than the one (1) nor more than the nine (9) weeks (in addition to and immediately following the waiting period), as determined by the Commission in each case according to the seriousness of the misconduct.

(c) If the Commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of



the work offered are substantially less favorable

(c) If as a condition of being employed the individual would be required to join a company to the individual than those prevailing for similar work in the locality;

union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the Commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the Commission upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the State of Montana or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for temporary disability under the workmen's compensation law of any

state or under a similar law of the United States, or

(3) Old age benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, provided, that if such remuneration as referred to in (1) (2) and (3) of this sub-section is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

### **CLAIMS FOR BENEFITS**

Section 6. (a) **FILING.** Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the Commission to each employer without cost to him.

(b) **INITIAL DETERMINATION.** A representative designated by the Commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5 (d) of this Act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the Commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that sub-section which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other in-

interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification or within seven calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final decision of the Commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) **APPEALS.** Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) **APPEAL TRIBUNALS.** To hear and decide disputed claims, the Commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this Act, consisting in each case of either a salaried examiner selected in accordance with section 11 (d) of this Act, or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the Commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary

expense. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) **COMMISSION REVIEW.** The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The Commission shall promptly notify the interested parties of its findings and decision.

(f) **PROCEDURE.** The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) **WITNESS FEES.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission. Such fees shall be deemed a part of the expense of administering this Act.



(h) **APPEAL TO COURTS.** Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and has been designated by it for that purpose, or at the Commission's request, by the attorney general.

(i) **COURT REVIEW.** Within ten days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The Commission may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation law of this state. An

appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this Act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Commission shall so order.

## CONTRIBUTIONS

### Section 7. (a) PAYMENT.

(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment (as defined in this Act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission *for the fund in accordance with such regulations as the Commission may prescribe* and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

### (b) RATE OF CONTRIBUTIONS.

(1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(b) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, *and for each calendar year thereafter.*

(c) STUDY FOR MERIT RATING. *The Commission shall investigate and study the operation of this*



*Act and the actual experience hereunder with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer or industry and would encourage the stabilization of employment. The Commission shall submit their report and recommendations to the Governor and the Legislature not later than January 1, 1945.*

**PERIOD, ELECTION AND TERMINATION OF  
EMPLOYER'S COVERAGE**

Section 8. (a) Any employing unit which is or becomes an employer subject to this Act within any calendar year, shall be subject to this Act during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this Act only as of the first day of January, of any calendar year, only if it files with the Commission prior to the *last day of February*, of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this Act, *and the total wages payable for employment by said employer in the preceding calendar year did not exceed \$500.00.* For the purposes of this subsection, the two or more employing units mentioned in paragraph (2) or (3) of Section 19 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this Act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the Commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1, of any calendar year, subsequent to such two (2) calendar years only if at least thirty (30) days prior to said first

day of January it has filed with the Commission a written notice to that effect.

Any employing unit for which services that do not constitute employment as defined in this Act, are performed may file with the Commission, a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the Commission a written notice to that effect.

#### **UNEMPLOYMENT COMPENSATION FUND**

Section 9. (a) **ESTABLISHMENT AND CONTROL.** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the Commission exclusively for the purposes of this Act. This fund shall consist of (1) all contributions collected under this Act, together with any interest thereon collected pursuant to Section 14 of this Act; (2) all fines and penalties collected pursuant to the provisions of this Act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) **ACCOUNTS AND DEPOSIT.** The state treasurer shall be ex-officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commission and shall issue his warrants upon it in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an

unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 14 of this Act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the Commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

(c) WITHDRAWALS. Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission. The Commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Ex-

penditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provision of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of a member of the Commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) DISBURSEMENTS OF FUNDS IF FEDERAL ACT BECOMES INOPERATIVE. If Title III or IX of the Federal Social Security Act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this Act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state state treasurer to be paid into the unemployment compensation fund and funds there held shall be immediately distributed, upon order of the Commission, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the State of Montana.

#### **TRANSFER OF FUNDS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT**

Section 1. Notwithstanding any requirements of Section 9 of the Montana Unemployment Compensation Law (Chapter 137 of the Twenty-fifth Legislative Assembly, 1937), the Unemployment Compensation Commission of Montana, shall, prior to July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from



the Unemployment Compensation Trust Fund for the State of Montana, established and maintained pursuant to Section 904 of the Federal Social Security Act, as amended, to the Railroad Unemployment Insurance account established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act (52 Stat. 1094), an amount hereinafter referred to as the preliminary amount; and shall, prior to December 31, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from the Montana Unemployment Compensation Trust Fund to said Railroad Unemployment Insurance account an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation trust fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term employer is defined in Section 1 (a) of the Railroad Unemployment Insurance Act) and credited to the Montana Unemployment Compensation Trust Fund bears to all contributions theretofore collected under this Act and credited to such fund. The liquidating amount shall consist of the total amount of contribution collected from "employers" (as the term employer is defined in Section 1 (a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this Act during the period from July 1, 1939 to December 31, 1939, inclusive.

Section 2. The Unemployment Compensation Commission of Montana is hereby authorized to cooperate with and enter into agreements with the Railroad Retirement Board with respect to establishment, maintenance and use of Montana State Employment Service facilities, and to make available to the said Railroad Retirement Board the records of the Commission relating to employers' status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the Railroad Retirement Board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094); that any moneys received by the Unemployment Compensation Commission of Montana from the Railroad Retirement Board or any other

governmental agency with respect to the establishment, maintenance and use of Montana State Employment Service facilities, shall be paid into and credited the proper division of the Unemployment Compensation Administration Fund set up and established under Section 13 of the Montana Unemployment Compensation Act.

Section 3. This Act shall be in full force and effect from and after its passage and approval.

#### **UNEMPLOYMENT COMPENSATION COMMISSION**

Section 10. (a) ORGANIZATION. There is hereby created a Commission to be known as the Unemployment Compensation Commission of Montana. The Commission shall consist of three members who shall be appointed by the Governor on a non-partisan merit basis within sixty days after the passage of this Act and after any vacancy occurs in its membership. Two of the members of the Commission shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one year for each of the said two members shall not exceed the sum of five hundred dollars (\$500.00). Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this Act shall expire, as designated by the Governor at the time of appointment, one at the end of three years, the other at the end of six years. The third member of the Commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the Governor and shall be the executive director. During his term of membership on the Commission no member shall serve as an officer or committee member of any political party organization. The Governor may at any time, after notice and hearing, remove any commissioner for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.



(b) DIVISIONS... The Commission shall establish two coordinate divisions: The Montana State Employment Service division created pursuant to Section 12 of this Act, and the Unemployment Compensation division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except insofar as the Commission may find that such separation is impracticable.

(c) QUORUM. Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the Commission.

### ADMINISTRATION

Section 11. (a) DUTIES AND POWERS OF COMMISSION. It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. Not later than the 1st day of February of each year, the Commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding calendar year and shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible

period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(b) REGULATIONS AND GENERAL AND SPECIAL RULES. General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) PUBLICATION. The Commission shall cause to be printed for distribution to the public the text of this Act, the Commission's regulations and general and special rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) PERSONNEL. Subject to other provisions of this Act, the Commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The Commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this Act, and may in its discretion bond any person handling money or signing checks hereunder. The Commission shall classify positions under this Act and shall establish salary schedules and minimum personnel standards for the positions so classified. The Commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months

in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this Act. The Commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

(e) **RECORDS AND REPORTS.** Each employing unit shall keep true and accurate work records, containing such information as the Commission may prescribe. Such records shall be open to inspection and shall be subject to being copied by the Commission or its authorized representative at any reasonable time and as often as may be necessary. The Commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the Commission deems necessary to the effective administration of this Act. Information thus obtained or obtained from any individual pursuant to the administration of this Act shall except to the extent necessary for the proper presentation of a claim be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the Commission or appeal tribunal shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than 90 days, or both.

(f) **OATHS AND WITNESSES.** In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue sub-

poenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act.

(g) SUBPOENAS. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the Commission or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the Commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the Commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished by a fine of not more than \$200 or by imprisonment for not longer than sixty days, or both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) PROTECTION AGAINST SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission, the chairman of an appeal tribunal or any duly authorized representative of any of them or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no



individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) **STATE-FEDERAL COOPERATION.** In the administration of this Act, the Commission shall cooperate to the fullest extent consistent with the provisions of this Act with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Act.

Upon request therefor the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

(j) **RECIPROCAL BENEFIT ARRANGEMENTS.** The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this Act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this State or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of sev-

eral states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

### **EMPLOYMENT SERVICE**

Section 12. (a) **STATE EMPLOYMENT SERVICE.** The Commission shall create a division to be known as the Montana State Employment Service which division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act, and for the purpose of performing such duties as are within the purview of the act of congress entitled: "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 [48 Stat. 113; U. S. C., Title 29, Sec. 49 (c)], as amended. The said division shall be administered by a full time salaried director, who shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this State, in conformity with section 4 of said act, and this State will observe and comply with the requirements thereof. The Montana State Employment Service is hereby designated and constituted the agency of this state for the purpose of said act. The Commission is directed to appoint the director, other officers, and employees of the Montana State Employment Service. Such appointments shall be made in accordance with regulations prescribed by the director of the United States Employment Service.

(b) **FINANCING.** All moneys received by this State under the said act of congress, as amended,



shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the Montana State Employment Service to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, the Montana State Employment Service is authorized to enter into agreements with any political subdivisions of this State or with any private, non-profit organization, and as a part of any such agreement the Commission may accept moneys, services, or quarters as a contribution to the employment service account.

#### **UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND**

Section 13. (a) SPECIAL FUND. There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this Act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the Commission for expenditure consistent with this Act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the Commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation

fund under section 9 of this Act, shall be paid from the moneys in the unemployment compensation administration fund.

(b) **EMPLOYMENT SERVICE ACCOUNT.** A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to Section 12 of this Act and for the purpose of cooperating with the United States Employment Service. There is hereby appropriated to the employment service account of the unemployment compensation administration fund, from any money in the state treasury not otherwise appropriated, for the period beginning July 1st, 1937, and ending June 30, 1938, the sum of \$13,021.26 and, for the period beginning July 1st, 1938 and ending June 30, 1939, the sum of \$13,021.26. In addition, there shall be paid into such account the moneys designated in Section 12 (b) of this Act, and such moneys as are apportioned for the purposes of this account from any moneys received by this State under Title III of the Social Security Act, as amended.

### **COLLECTION OF CONTRIBUTIONS**

Section 14. (a) **INTEREST ON PAST DUE CONTRIBUTIONS.** Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of 1 per centum per month from and after such date until payment plus accrued interest is received by the Commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) **COLLECTION.** If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial re-

view under this Act and cases arising under the Workmen's Compensation Law of this State.

(c) **PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act, *contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 840).*

(d) **REFUNDS.** If not later than *three* (3) years after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the Commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the Commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the Commission shall refund said amount, without interest, from the fund. For like cause and within the same period adjustment or refund may be so made on the Commission's own initiative.

#### **PROTECTION OF RIGHTS AND BENEFITS**

Section 15. (a) **WAIVER OF RIGHTS VOID.** Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contri-

butions, required under this Act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by an individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not more than \$1,000 or be imprisoned for not more than six months, or both.

(b) **LIMITATION OF FEES.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the Commission or its representatives or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall, for each such offense, be fined no more than \$500.00 or imprisoned for not more than six months, or both.

(c) **NO ASSIGNMENT OF BENEFITS; EXEMPTIONS.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse, or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void.

## **PENALTIES**

Section 16. (a) Whoever makes a false statement or representation knowing it to be false or



knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act, either for himself or for any other person, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than thirty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this Act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under

this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this Act for the collection of past due contributions.

### **REPRESENTATION IN COURT**

Section 17. (a) In any civil action to enforce the provisions of this Act the Commission and the State may be represented by any qualified attorney who is employed by the Commission and is designated by it for this purpose or at the Commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

### **NONLIABILITY OF STATE**

Section 18. Benefits shall be deemed to be due and payable under this Act only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums.

### **DEFINITIONS**

Section 19. As used in this Act, unless the context clearly requires otherwise:

(a) (1) "ANNUAL PAYROLL," means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "AVERAGE ANNUAL PAYROLL," means the average of the annual payroll of an employer for



the last three or five preceding calendar years, whichever average is higher.

(b) "BENEFITS," means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(c) "BASE PERIOD," means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "BENEFIT YEAR," with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the date of filing of a valid claim by said individual, and thereafter the fifty-two consecutive-week period beginning with the date of the next valid claim filed after the termination of his last preceding benefit year.

(e) "CALENDAR QUARTER," means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the Commission may by regulation prescribe.

(f) "COMMISSION," means the Unemployment Compensation Commission established by this Act.

(g) "CONTRIBUTIONS," means the money payments to the state unemployment compensation fund required by this Act.

(h) "EMPLOYING UNIT," means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this Act. Each individual employed to perform or to assist in performing the work of any agent or

employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) “EMPLOYER” means:

(1) Any employing unit which for some portion of a day in each of the 20 different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); *and whose total annual payroll within either the current or the preceding calendar year, exceeds the sum of Five Hundred Dollars (\$500).*

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this Act) and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under Section 8, ceased to be an employer subject to this Act; or

(5) For the effective period of its election pursuant to Section 8 (c) any other employing unit which has elected to become fully subject to this Act.

(j) (1) “EMPLOYMENT” subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State and (i) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal government, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(4) Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(F) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States.

(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreement shall become effective

ten days after publication thereof in the manner in Section 11 (b) of this Act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(k) "EMPLOYMENT OFFICE," means a free public employment office, or branch thereof, operated by this State or maintained as a part of a state-controlled system of public employment offices.

(l) "FUND," means the unemployment compensation fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

(m) "TOTAL UNEMPLOYMENT":

(1) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

(3) *As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of five dollars (\$5.00) in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than Five Dollars (\$5.00) per week is payable.*

(n) "STATE" includes, in addition the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(o) "WEEK," means such period of seven consecutive calendar days, as the Commission may by regulations prescribe.

(p) "UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND," means the unemployment compensation administration fund established by this Act,



from which administrative expenses under this Act shall be paid.

(q) "WAGES," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the Commission.

(r) "WEEKLY BENEFIT AMOUNT." An individual's "weekly benefit amount," means the amount of benefits he would be entitled to receive for one week of total unemployment.

### **SAVING CLAUSE**

Section 20. The legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this Act at any time.

Section 21. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The legislative assembly declares that it would have passed this Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared unconstitutional, the same being necessary to the welfare of the State of Montana, and the political subdivisions thereof by reason of the existence of an extraordinary emergency.

Section 22. ACT TO BE IN EFFECT. If Title III or Title IX of the "Federal Social Security Act" is declared unconstitutional, or in any way becomes inoperative, then this Act shall terminate and cease and have no force and effect as of the date when said title or titles of said Act is declared unconstitutional, or becomes inoperative.

Section 23. APPROVAL BY SOCIAL SECURITY BOARD.

If the federal Social Security Board shall fail to approve this Act, the same shall immediately terminate and have no force and effect.

Section 24. EFFECTIVE DATE. The legislature hereby finds, determines, and declares that this Act is necessary for the immediate preservation of the public peace, health and safety; that an emergency exists, and that this Act, therefore, shall take effect and be in force from and after its passage and approval.

Approved March 16, 1937.

Amendments approved March 9 and March 15, 1939.

